

WETLANDS COUNCIL

MINUTES

April 10, 2007

The Wetlands Council met on Tuesday, April 10, 2007 at the
Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Lawrence E. Morse, Interim Chairman, Thomas G. Chrisenton, John S. Cobb, Dennis Danna, Paul W. Goodwin, Camilla Lockwood, Dan Lynch, Seth Prescott, Thomas Sloan, Jack Ruderman, and David Thompson

Absentees: Sharon Champagne and Brian K. Fowler

The meeting was called to order by Interim Chairman Larry Morse at 9:00 a.m.

1. Approval of Minutes of February 27, 2007 Council Meeting

A motion was made by Councilor Cobb and seconded by Councilor Prescott to accept the minutes of February 27, 2007. It was unanimously voted.

2. Organization

Jack Ruderman joins the meeting

Councilor Fowler has continued to work as Hearings Officer and Chairman Morse will be attending those hearings in the future.

Vice Chair Status:

Motion made by Councilor Chrisenton to nominate John Cobb as Vice Chair of this council and seconded by Councilor Sloan. It was unanimously voted.

Hearings Officer Status:

Attorneys Anne Edwards and Anthony Blenkinsop from the Attorney General's office will attend this meeting later to discuss the options available.

The Council will need to spread the Appeals around, sharing the responsibility. Members were reminded and encouraged to attend the upcoming training session on May 11th.

Chairman Morse introduced and welcomed the new member of the Council, David Thompson, representing the Conservation Districts.

3. Status of Appeals

Michael Sclafani, Appeals Clerk, distributed an Appeals Status Report and reviewed the report with the Council members.

- Docket No. 04-21 WtC – Lake Shore Realty Trust: WB #2001-01294

On March 12, 2007, Appellant files a Motion to Bring Forward Appeal. On March 20, 2007 the Appeal Hearing was scheduled for April 10, 2007, the Appeal Hearing Notice issued, and the Pre-hearing Order issued. DES filed a Motion to Continue Hearing on March 26,

2007. On April 3, 2007, the Council grant Motion to Continue Hearing, the Appeal Hearing was rescheduled for June 26, 2007 and the Hearing Notice was distributed. No action was needed or taken by the Council.

- Docket No. 05-04 WtC – Philip and Georgette Smith: WB #2000-00914
On February 27, 2007, the Council voted to grant the DES' Motion for Reconsideration and the Rehearing was scheduled for April 10, 2007. The Hearing Notice was issued on February 28, 2007. On March 12, 2007 the Appellant files a Motion to Continue the Hearing. The Motion to Continue was granted on March 20, 2007 with the Hearing Continued to May 22, 2007.
No action was needed or taken by the Council.
- Docket No. 06-03 WtC – Donald and Mary Larson: WB #2005-02387
On April 9, 2007, Appellant advised settlement negotiations continue and that progress is being made towards resolution of the issues. The Appellant will withdraw this appeal as soon as a settlement is reached.
No action was needed or taken by the Council.
- Docket No. 06-06 WtC – West Alton Marina: WB #2005-00049
On March 30, 2007, this Appeal was withdrawn.
No action was needed or taken by the Council. Appeal is closed.
- Docket No. 06-09 WtC – Christopher and Christine Collins: WB #2005-02587
On March 29, 2007, this Appeal was withdrawn.
No action was needed or taken by the Council. Appeal is closed.
- Docket No. 06-10 WtC – Ralph and Virginia Sanborn: WB #2006-00325
On February 27, 2007, the Appeal Hearing was convened with the Council voting to Grant the Appeal. The Council then voted to deny the Appellant's Proposed Findings and Rulings. On March 14, 2007, a Decision & Order to Grant the Appeal was issued. On April 3, 2007, Attorney Mark B. Johnson filed an Appearance on behalf of the Applicant as well as a Motion for Reconsideration. The Motion was timely filed.

At 9:23 AM there was a fire drill here at the DES building and all parties were evacuated. The meeting reconvened at 9:35 AM.

A motion was made by Councilor Sloan and seconded by Councilor Cobb to grant the Motion for Reconsideration and motion passed with a majority, one nay.

- Docket No. 06-11 WtC – Dennis Proulx: WB # 2006-00769
On March 15, 2007 the Pre-hearing Conference was rescheduled for April 2, 2007. The Pre-Hearing Conference was held April 2, 2007 with the Appeal Hearing scheduled for August 14, 2007. April 2, 2007 Attorney Brooks from the Attorney General's office files an Appearance on behalf of DES. Pre-hearing Order distributed and Appeal Hearing Notice Distributed on April 3, 2007. On April 3, 2007 a letter correcting the Hearing date from August 8 to August 14 was distributed. Attorney Patterson files a Withdrawal of her Appearance with Attorney Brooks to take her place on April 5, 2007.
No action was needed or taken by the Council.

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- Docket No. 06-12 WtC – Bodanza et al.: WB #2002-02483
On April 2, 2007 Pre-hearing Conference was held and the Appeal Hearing scheduled for June 12, 2007. Mary Ann Tilton files an Appearance on behalf of DES.
On April 3, 2007 the Pre-Hearing Order was distributed and the Appeal Hearing Notice distributed.
No action was needed or taken by the Council.
- Docket No. 06-14 WtC – Scott DeSantis: WB #2004-02635
Appeal is Withdrawn. Appeal is closed.
- Docket No. 06-16 WtC – Shane Forest: WB#1999-01294
This Appeal, at the request of the parties, is stayed.
No action was needed or taken by the Council.
- Docket No. 06-18 WtC – Richard Totaro: WB#2006-01921
On March 1, 2007 Attorney Allen Brooks files an Appearance on behalf of DES.
DES files for the Certified Record on March 16, 2007. On March 22, 2007 the Pre-hearing Conference is rescheduled to April 10, 2007. On April 6, 2007 Attorney Robert Cheney and Attorney John-Mark Turner file an Appearance on behalf of the Appellant. The Appellant files an Assented-to Motion to Continue Pre-hearing Conference. On April 9, 2007 Council grants Assented-to Motion to Continue Pre-hearing Conference with date to be announced.
No action was needed or taken by the Council.
- Docket No. 07-01 WtC – Robert and Betty Howland: WB#2006-01654
On March 1, 2007 Appeal Accepted and Pre-hearing Conference Scheduled letter distributed with date of March 26, 2007. March 13, 2007 DES files Certified Record with the Council. On March 22, 2007 the Pre-hearing Conference rescheduled to April 10, 2007.
No action was needed or taken by the Council.
- Docket No. 07-02 WtC – Town of Barrington: WB#2004-02817

At this time Chairman Morse stepped out of the meeting room due to a conflict with this Appeal and John Cobb, Vice Chairman, officiated.

On January 8, 2007 Notice of Appeal filed by Hand Delivery, not Timely filed (31st Day). Also Attorney Mark E. Beliveau files an Appearance on behalf of the Appellant. January 9, 2007 Receipt of Appeal letter was distributed. Attorney Jennifer Patterson files an Appearance on behalf of DES on January 24, 2007. On January 29, 2007 Attorney Tony F. Soltani files an Appearance on behalf of the Applicant. On February 26, 2007 Attorney Beliveau sent a letter regarding the Timeliness. At the Council meeting, February 27, 2007, Appeal was tabled pending legal advice regarding the Timeliness from the Council's Attorney. On March 20, 2007 advise was received from the Council's attorney that the Timely filing could move forward to Monday.

A motion was made by Councilor Ruderman and seconded by Councilor Sloan to accept this appeal and it was voted unanimously.

Chairman Morse returns to the Council meeting. Further discussions on hearing dates for this Appeal will be discussed with Vice Chairman Cobb.

- Docket No. 07-03 WtC – James Watson: WB#2006-01302
On March 1, 2007 the Appeal Accepted and Pre-hearing Conference Scheduled letter distributed. Pre-hearing Conference scheduled for March 26, 2007. On March 13, 2007 DES files a Certified Record with the Council. On March 22, 2007 Pre-hearing Conference rescheduled for April 10, 2007.
No action was needed or taken by the Council.

4. Wetlands Bureau Update

Collis Adams, Wetlands Bureau

- SPGP: Wednesday, April 11, 2007, at 1 PM a joint public information session with DES and the Army Corp of Engineers is to be held at DES auditorium. This is with to discuss the State Programmatic General Permit (SPGP) which expires in June 2007. The new general permit is in draft form and comments, views, and questions will be open for discussion at the meeting. A summary sheet is available online that highlights the differences between the current and proposed SPGP. Chairman Morse noted the comment period has been extended to April 18, 2007.
- Stream Crossings: Work continues with Fish and Game to create guidelines for stream crossings. Vernal pools effort is farther along than stream crossings is as it is much more detailed. There will be a work group formed for stream crossings as there is for vernal pools.
Councilor Chrisenton provided all the Council members with copies of all the email correspondence in regards to vernal pools and asked for similar documentation for the stream crossings workgroup as work continues.
- Vernal Pools: The workgroup is refining the definition of a vernal pool and how it is to be identified in the field. It will then go to legal review and then go to rule making process.
- National Heritage Bureau Data Check Tool: It is up online. This review process and documentation deadline has been moved to June 1, 2007. Discussions are on-going between DES and DRED. This process opens up communications early-on, makes people aware of concerns, brings agencies together, and moves forward to address the issues quickly. The Permit By Notification (PBN) documents take you through the process and explain what data check you need to do. Councilor Chrisenton asked that when DRED and DES meets that there be representation from the Wetlands Council so there can be an open channel for discussion.
- Staffing: There is 1 vacant Environmentalist II position.
- Other: There have been 6 new NRCS emergency requests relative to flooding issues. Enforcement and Compliance section is looking at the administrative fine framework as the fine levels are inadequate. The \$2,000 fine limit is not a disincentive to those who do projects and consider it just part of the cost of building.
- In-Lieu- Fee Rules: The public hearing will be May 4, 2007 from 9 – 12 at the Fish and Game Conference room. Chairman Morse noted the letter sent to the Commissioner from the Council. A response letter has been received from the Commissioner and changes have been made. The JLCAR will hold another public hearing.
- Applications are being reviewed and revised for clarity. It is in-house right now and then will address stake-holder groups for more helpful suggestions and comments to improve the application forms, their instruction and guidance. Draft applications will be distributed to the Council members to make comments.

- I. DES did not file an appearance in a recent appeal process per guidance by the Attorney General's office. It has now been decided that DES will file appearances on all appeals from this time forward. Level of actual involvement will vary upon each appeal. Michael Sclafani noted the Council rules do identify the Department as a party to the Appeal and require the Department to designate someone.

Chairman Morse addressed those in the audience to see if they had anything they wanted to share at this time. All indicated they were there to listen.

Councilor Chrisenton, Wetlands representative to the vernal pool work group, reported they now have a draft rule, on page 40 of the handout. The timeline of the process shows that it is now time for the Wetland Council's review and comment. The letter, Exhibit A attached, was read aloud by Councilor Chrisenton. Collis stated that the rule making process has not been initiated yet. The draft must be first completed, then to legal council for review and approval and then it will come to the Wetlands Council. It may be a month or two for this to happen. It is approximately 6 months or more before stream crossing rules will be ready. Chairman Morse noted the timeline is appropriate for review so that the Council can be well prepared to efficiently discuss the rules when they come before the Council. Mary Ann Tilton shared that the vernal pools, in a large part, are something that the Department already regulates by statute.

Collis shared that the Corp has been very cooperative working on the general permit with us. The general permit will now talk about the importance of upland buffers to vernal pools but will not have any specific numbers. The general permit can be modified within the five year time frame. This is a win-win for the New Hampshire general public and the Corp of Engineers.

5. NH Timberland Owners Assoc. Request to address the Council

Jasen Stock, Executive Director, New Hampshire Timberland Owners Association (NHTOA) shared they have been part of the vernal pool work group and interested in the SPGP. He commented that DES staff has been very accessible and easy to work with in this process. The NHTOA is willing to be a resource and participate in the process to help.

The issues they and also the Farm Bureau are concerned about are:

- 1) interconnection between the Army Corp. and DES and the coordination of those efforts. It has been made clear that the forestry and agricultural operations are exempt. They would like the general permit to have language specific to this.
- 2) question of regulatory authority.
- 3) what areas are we looking at being impacted? a financial note should be assessed to that
- 4) what does expanding regulatory authority, what burden does this put on DES, are there adequate resources for enforcement?

He appreciates the Council's willingness to have public forums on these regulations.

Jasen noted that the timberland industry is the 3rd largest manufacturing sector in the state. The importance of forestry to the rural economy is huge. The pulp mill closure has had a large negative impact on the industry.

Councilor Chrisenton thanked them and the other stakeholders who have help with this process.

Jasen reported that HB219, which would include a shared seat with the Timberland Association and Farm Bureau on the Wetlands Council, has passed the House and is now at the Senate.

6. **Old Business**

None

7. **Other Business**

Councilor Lockwood share information on their 5th Annual Vernal Pool Workshop to be held on May 5th from 10 – 12 at the Fremont Landfall. Fliers were distributed.

8. **Next Meeting**

The next meeting will be May 22, 2007. There will be a hearing.

Meeting went into Recess at 10:50 for Attorney/Client discussion with Attorneys Edwards and Blenkinsop.

Council meeting reconvened at 11 AM.

9. **Adjournment**

A motion was made by Councilor Sloan and seconded by Councilor Goodwin and was unanimously voted to adjourn.

The meeting adjourned at approximately 11:03 AM.